IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20890 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MILAN DAYARAMBHAI THAKKAR - Petitioner(s)
Versus
NITI PRAVINBHAI BUDDHDEV - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 13/11/2006

ORAL JUDGMENT

1. Mr. Milan Dayarambhai Thakkar has filed this petition challenging an interim order dated 1.8.2006 passed by the Principal Senior Civil Judge, Rajkot below application Exhibit 5 in Special Civil Case No.35 of 2005. By the impugned order, the learned

trial Judge has held that the application Exhibit 5 for interim maintenance filed by Niti Pravinbhai Buddhdev, original plaintiff – respondent herein is partly allowed and for the husband – Milan Dayarambhai Thakkar petitioner herein, original defendant to pay interim maintenance Rs.7,000/- to the wife original plaintiff till the disposal of the suit. The marriage between Niti Pravinbhai Buddhdev and the petitioner Milan Dayarambhai Thakkar was solemnized on 1.12.2001 as per the the Hindu Rites and Customs.

2. However, due to difference and dispute arose on 25.2.2002, the respondent wife left the matrimonial house and started residing with her parents.

2.1 In view of the aforesaid circumstances, herein the respondent filed an application being Hindu Marriage Petitioner (H.M.P.) No.24 of 2004 for divorce. However, the same was latter withdrawn on 18.12.2004.

2.2 Thereafter, the original plaintiff filed Special

Civil Suit No.35 of 2005 claiming ad interim maintenance from the petitioner husband. The petitioner husband had filed his written statement opposing the said application. It appears that from the date on which the application was filed i.e. 15.4.2005, learned trial Judge has passed ex parte ad interim order of Rs.7,000/- as maintenance in favour of the wife. The said order is annexed at Page 13 in this behalf.

2.3 Being aggrieved and dissatisfied with the said order, the petitioner – Milan Dayarambhai Thakkar has challenged the amount of ex parte interim order passed by the trial Court.

2.4 Thereafter, it appears that the matter was placed for hearing and both the husband and wife were heard. Thereafter, the learned trial Judge passed impugned order for interim maintenance as stated above.

3. Mr. Nirav Thakkar, learned advocate for the petitioner has challenged the impugned order on the

following grounds :

3.1 The respondent had left her matrimonial house without any justifiable reason and therefore, she is not entitled to any maintenance.

3.2 The respondent herself is a Doctor and she admittedly earns by doing work Rs.4,000/- per month. On this ground, she is also not entitled for any maintenance.

3.3 The amount of Rs.7,000/- per month as directed to be paid to the respondent is unjustifiably high and there is no basis to arrive at such a huge amount per month.

3.4 The petitioner has responsibility of maintaining his parents out of his earning and his parents are not keeping good health requiring them to get continuous medical treatment.

3.5 Even otherwise, even if the amount of Rs.7,000/- per month was just and proper, the sum of Rs.4,000/-

per month admittedly earned by the respondent ought to have been deducted.

4. On the other hand, Mr. Harin Raval, learned advocate for the respondent has supported the reasons assigned by the trial Court.

5. I have gone through the application filed by the wife respondent before the trial Court dated 15.4.2005. I have gone through the reply filed by the husband petitioner before the trial Court in June, 2005.

6. It appears that the petition was filed on 29th September 2006. The matter originally placed before this Court (Coram : C.K. Buch, J.) on 17th October 2006, and thereafter placed before this Court from time to time.

6.1 From the record, it appears that the petitioner has filed Income Tax Returns for the year 2005-06 i.e. 1.4.2005 to 31.3.2006 and also for the year 2003-04 i.e. from 1.4.2003 31.3.2003 and other list

of documents in this behalf and the salary certificate is also filed. In this proceedings, the wife has also filed affidavits on 21.11.2006 and 17.1.2006 and the respondent has filed affidavit-in-rejoinder on 4.4.2006.

7. Mr. Nirav Thakkar, learned advocate for the petitioner has invited my attention to the Section 23 of the Hindu Adoption and Maintenance Act, 1956, which reads as under :

Section 23 : Amount of maintenance :

(1)It shall be in the discretion of the Court to determine whether any and if so what maintenance shall be awarded under the provisions of this Act, and in doing so that the Court shall have due regard to the considerations set out in Sub-Section (2) or Sub-Section (3), as the case may be, so far as they are applicable.

(2)In determining.....

(a).....

(b).....

(c).....

(d) the value of the claimant's

property and any income derived from such property or from the claimant's own earning or from any other source;

7.1 The learned advocate for the petitioner has assailed the order of the trial Court on the ground that admittedly the wife is earning Rs.4,000/- per month and when the learned Judge has decided to award interim maintenance, the learned Judge ought to have considered this amount and the said amount is to be reduced accordingly in this behalf.

8. On the other hand, learned advocate Mr. Harin Raval for the respondent has invited my attention to the affidavit-in-reply filed by the respondent as well as Income Tax Return which have been filed in this case, wherein for the year 2004-05 the gross income shows as Rs.3,18,436/- in which the income from other sources is shown Rs.8,475/-.

9. The learned advocate for the respondent – wife has invited my attention towards the Income Tax Return for the year 2005-06 wherein the gross income of the husband shows as Rs.2,75,275/- and the income

shows from other sources as Rs.28,662/-.

10. Over and above, the learned advocate for the petitioner husband has invited my attention to various proceedings initiated in this behalf and the learned advocate for the respondent wife has also stated that the petitioner is a reputed Doctor and he has large & lucrative practice at Rajkot. He has also stated that at the time of his marriage, the wife was staying with petitioner at 'Pushpkunj', Mangla Road, Nr. Virani Chowk, Rajkot. Thereafter, wife deserted the house of the petitioner. The petitioner purchased another property namely 'Viram' as residential house in this behalf. He has also purchased other household instruments like Television, Washing Machine, Music System, Refrigerator and Domestic Flour Mill, it shows that the husband has reasonable income and staying in good house and one can say that he is living in good middle class family.

11. Learned advocate for the petitioner has stated that after considering all this aspect, the trial Court was not justified in awarding Rs.7,000/- as

interim maintenance in this behalf.

12. I have given anxious consideration in this behalf. I have also considered Section 23 of The Hindu Adoption and Maintenance Act, 1956, which I have referred earlier. However, I have also considered Section 24 of Hindu Marriage Act regarding Maintenance pendente lite and expenses of proceedings.

Section 24 : Maintenance pendente lite and expenses of proceedings

> Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may see to the court to be reasonable.

13. I have also considered the facts and circumstances of the case in this behalf. I have also relied upon the judgment in the case Jyotiben Samir Pawar V. Smir Bhaskarro Pawar, AIR 2001 Guj. 165 (Particularly para 12)

> “In my view that right of the wife for maintenance is an incident of the status or estate of matrimony. In general, therefore, the husband is bound to defray the wife's casts of any proceedings under the Act and to provide for her maintenance and support pending the disposal of such proceedings. The doctrine of alimony, which expression in this strict sense means allowance due to wife from husband or separation from certain causes, has its basis in social conditions in England under which a married woman was economically dependent and also in a position of tutelage to the husband and was intended to secure justice to her while prosecuting or defending proceedings under matrimonial law. In my view, in view of Section 24 of the Hindu Marriage Act and the decision rendered above that the law relating to matrimonial causes provides for rules for payment of maintenance pendente lite and expenses of proceedings by the Marriage Act adopts those principles and goes one radical step further when it

> prescribes that any such order can be made not only in favour of the wife but also in favour of the husband."

14. In this behalf, I have also relied upon the judgment of this Court in the case of **Ramani Menon & Anor. Vs. K.G. Omnakuttan Superintending Engineers & Anr. reported in 2004 (1) GCD 488 (Guj.)**, wherein this Court has held that while considering the income of the husband the deduction for the loan contracted by the husband cannot be ignored but loan taken for investment cannot be said as not forming part of the income of the husband and it should commensurate with the status of the family of the husband.

15. In view of the facts and circumstances of the case and in view of the affidavit-in-reply filed by the respondent in this behalf, which I have referred earlier particularly affidavit dated 21.11.2005 filed by the respondent wife as well as further affidavit dated 17.11.2006, from these two affidavits, it appears that initially the Court has to settle the dispute between the parties, but same efforts was not successful, therefore, there is no alternative to

hear the matter in this behalf on merits of the matter.

16. The respondent has narrated in her affidavit-in-reply that the order dated 1.8.2005 as well as order dated 15.4.2005 on this behalf to pay maintenance of Rs.7,000/- per month for directing payment of interim maintenance was not being complied by the petitioner.

17. One of the ground mentioned by the petitioner that he has to maintain his father and he was associated with Rajkot Plastic Association in the past. Due to ill health, he has resigned from the office of Rajkot Plastic Association. He has stated that his pious duty of maintaining his parents and responsibility of taking care of them does not vanish or diminish in any way, even they are earning. Though it is duty of his son to maintain his father, but he has to maintain his wife and children also.

18. Learned advocate has also produced Income Tax Returns and it shows the petitioner husband has large practice and he is also visiting outside Rajkot on certain days, so that he gets more work and more

money as well as he visits once outside. He earns more for future investment. He has reasonably higher middle class family having Television, Washing Machine, Music System, Refrigerator and Domestic Flour Mills etc.

19. That he further stated that considering the life style of the petitioner and considering his property situated in the pose area of Rajkot in terms of price of said property, it is reasonably believe that the petitioner has reasonable income in this behalf.

19-A. I have considered Sec.24 of the Hindu Marriage Act which provides maintenance pendente lite and expenses of proceedings. I have also considered the judgment of this Court in the case of **Jyotiben Samir Pawar** and also **Ramani Menon** (supra). I have considered the facts and circumstances of the case in this behalf. After giving anxious considering to all these facts, this Court is of the view that Section 24 confers right on a wife for maintenance, is an incident of the status or estate of matrimony. In general, therefore, the husband is bound to defray the wife's costs of any proceeding under the Act and

to provide for her maintenance and support pending the disposal of such proceeding. The doctrine of alimony, which expression in this strict sense means allowance due to wife from husband or separation from certain causes, has its basis in social conditions in India under which a married woman was economically dependent and almost in a position of tutelage to the husband and was intended to secure justice to her, while prosecuting or defending proceedings under matrimonial law.

19-B. The object of Sec.24 is to enable the wife who has no independent sufficient income for her support and the necessary expenses of any proceeding under the Act to obtain maintenance and expenses pendente lite, so that the proceedings may be conducted without any hardship on her part. Whatever may be the situation, the provisions of this section are mandatory and the court has to assess the reasonable amount to be paid to the litigating opposite party not as a grace, rather as punishment against the person who initiated the proceedings instead of reconciling the matter at home. The proceedings under this section are summary in nature. Its object is ad hoc and duration is temporary. The matter can

be decided on the basis of pleadings supported by affidavits and documents that may be filed by the parties in support of their contention.

19-C. In this matter the petitioner has challenged the order of the trial court granting maintenance under Section 24 of the Act on the ground of quantum that the trial court has granted more amount than what is expected in this behalf. This Court therefore of the view that under the act, there is no limit to the interim alimony awardable under Section 24. Section 24 speaks of fixing a reasonable amount. While determining the quantum of interim maintenance, the court has not only to take into consideration the income of the petitioner and the respondent but also relevant facts and circumstances in the case including the conduct of the parties. While fixing the quantum, the Court has to consider the object of the act also. While fixing of the maintenance the Court has to act in accordance with sound judicial principles. The following principles appear to be relevant:-

(a) Position and status of the parties.

(b) Reasonable wants of the claimants.

(c) Income of the claimant.

(d) Income of the opposite party.

(e) Number of persons the opposite party is to maintain.

19-D. This Court is of the view that the trial court has considered all these aspects and passed the order after giving cogent and convincing reasons and, therefore, this Court do not intend to interfere with the said order as this order is passed keeping in view of the object behind enacting under Sec.24 of the Act which I have set out earlier.

20. In view of the above, learned trial Judge has awarded maintenance of Rs.7,000/- is legal and valid and this Court under Article 227 of the Constitution of India, do not interfere with the said order in this behalf. The contention of the respondent that the income of the wife is to be believed Rs.4,000/- and therefore, the respondent may be granted Rs.3,000/- maintenance. The learned trial Judge has considered the said aspect and this Court do not interfere with this order of the learned trial Court.

21. In view of the fact that this being interim application though several contentions raised, I request the learned trial Judge to take up the matter and decide by 31st March, 2007 as early as possible.

(K.M. MEHTA, J.)

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